IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : Crl. Appeal No. 835-DB of 2005
Date of Decision : January 08, 2009

Ram Chander .... Appellant

Vs.

State of Punjab .... Respondent

CORAM : HON'BLE MR. JUSTICE MEHTAB SINGH GILL

HON'BLE MR. JUSTICE L. N. MITTAL

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Present : Mr. R. A. Yadav, Advocate
and Mr. J. B. S. Gill, Advocate
for the appellant.

Mr. S. S. Bhinder, Addl. A. G., Punjab.

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L. N. MITTAL, J. :

By this common judgment, we are disposing of two Criminal appeals i.e. Crl. Appeal No. 835-DB of 2005 instituted by Ram Chander and Crl. Appeal No. 104-DB of 2006 instituted by Amresh Jha @ Bhola and Rakesh Kumar @ Rakesh, as both these appeals have been preferred against judgment of conviction dated 19.09.2005 and order of sentence dated 21.09.2005 passed by learned Sessions Judge, Jalandhar thereby convicting Amresh Jha under Section 302 of the Indian Penal Code (in short – IPC) and sentencing him to undergo life imprisonment and to pay fine of Rs.5,000/- and in default of payment of fine, to undergo further rigorous imprisonment

for one year and also convicting the other two appellants Rakesh Kumar and Ram Chander under Section 302 read with Section 34 IPC and sentencing them to undergo rigorous imprisonment for life and to pay fine of Rs.2,000/- and in default of payment of fine, to undergo further rigorous imprisonment for six months.

Prosecution version is as under :-

Himmat Lal-complainant along with his son Dwarka Nath @ Dwarka Dass (since deceased) was running a tea stall near Rackman Fan Factory on Nakodar Road, Jalandhar. On 29.12.2002, at about 08:00 A.M., they opened their shop. Himmat Lal went to the nearby Saw Mill of Ramesh Kumar for purchasing fuel wood for use at tea stall. Ramesh Kumar was not present in the Saw Mill. His employees i.e. appellants were present there. Rakesh Kumar-appellant asked Himmat Lal to take the wood. When Himmat Lal asked Rakesh Kumar for taking money for the wood, Rakesh Kumar replied that the money be adjusted against amount due from him on account of tea taken from the shop of the complainant. Thereafter Himmat Lal moved towards the gate along with wood. Amresh Jha caught hold of the complainant from back side and started beating him. His noise attracted his son Dwarka Nath to the spot. All the three appellants took Dwarka Nath inside and gave him beating near the kitchen. Amresh Jha inflicted injury with sharp edged iron object on the right eye of Dwarka Nath with intention to kill him. The occurrence was also witnessed by Gurmeet Lal standing near the gate. When the complainant raised alarm, all the three appellants fled away from the spot along with weapon of offence. Himmat Lal and Gurmeet Lal removed Dwarka Nath to Civil Hospital, where after medico-legal examination, first aid was given to him. However, since Dwarka Nath was serious, he was taken to Satyam Hospital for treatment and was admitted there. The complainant made statement Ex.P-H at 02:30 P.M. in Police Post Bhargo Camp of Police Station

Division No.6, Jalandhar to SI Ravi Kumar, Incharge of the Police Post, narrating the aforesaid occurrence and stating that all the three appellants had caused injuries to Dwarka Nath with intention to kill him. Prior to it, Ruqa was received from Civil Hospital, whereupon ASI Mohinder Singh and HC Arjan Singh went there, but were told that the injured Dwarka Nath had been taken to some other hospital for treatment. After inquiry, the police officials went to Satyam Hospital, where Dwarka Nath was opined to be unfit to make statement. SI Ravi Kumar made endorsement Ex.P-H/1 on statement Ex.P-H and sent the same to the Police Station, where FIR Ex.P-H/2 was registered under Section 307/34 IPC. Dwarka Nath died on 02.01.2003. SI Ravi Kumar prepared inquest report Ex.P-L and sent the dead body for autopsy with request Ex.P-B. Dr. Balbir Singh conducted post mortem examination on the dead body on 03.01.2003. Right eye was protruded. Following injury was found :-

> *"A penetrated wound 1.5 cm x .75 cm present near medial canthus of right eye. Going upwards and slightly medially, towards right brow, over right eye lid. On dissection of the injury, it was communicating with Cranial Cavity. There was Haemotoma, bilateral and Hamatoma in Subarachnolid spacas, and brain matter and cisterns contained blood. There was laceration of brain matter. Heart was empty."*

Cause of death, in the opinion of the doctor, was cardiac arrest as a complication of aforesaid head injury, which was ante mortem and sufficient to cause death in the ordinary course of nature. On 29.12.2002, SI Ravi Kumar lifted blood stained earth from the spot and prepared rough site plan Ex.P-N of the place of occurrence. Blood stained clothes of Dwarka Nath were also seized vide Memo Ex.P-G. All the three accused

were arrested on 02.01.2003. On 06.01.2003, Amresh Jha, after making disclosure statement Ex.P-M, got recovered a screw driver (weapon of offence) vide Memo Ex.P-M/2, with sketch Ex.P-M/1. Statements of witnesses were recorded during investigation. After completion of investigation, all the three accused were sent for trial.

Charge under Section 302 IPC against Amresh Jha and under Section 302 read with Section 34 IPC against the remaining two accused for commission of murder of Dwarka Nath and also charge under Section 323 IPC against all the three accused for causing hurt to complainant Himmat Lal was framed. They pleaded not guilty to charge and claimed trial.

In support of its case, the prosecution examined eight witnesses. Dr. Balbir Singh PW-1 stated about post mortem examination conducted by him on the dead body of the deceased. Dr. Joginder Singh PW-2 from Satyam Hospital stated that Dwarka Nath was admitted in his hospital on 29.12.2002 and intimation Ex.P-C was sent to the police. Dwarka Nath expired on 02.01.2003 and certificate Ex.P-D was issued regarding his death along with history sheet Ex. P-E. Dr. Gurpal Singh PW-3 stated that on 29.12.2002, at 08:50 A.M., he medico-legally examined Dwarka Nath and observed as under :-

> *"The condition of the patient :- at the time of admission the patient was unconscious, pulse was 60 per minute, feeble, B.P. 90/unrecordable, respiration was 22 per minute. Right eye was protruded and blesh bleeding was present. Left eye pupil slightly constructed and condition of the patient was serious. Following injuries were noted :-*
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> *Penetrating injury 0.75 cms x 0.5 cm present on the medial side of right*

eye. Eye protruded. It was present near the medial canthus of right eye. Swelling was present on the whole of eye. Fresh bleeding was present. Probing not done due to bleeding to know the depth. Referred for surgical and eye specialist expert opinion.

Injury No.1 was kept for surgical and eye specialist expert opinion."

The injury was caused with sharp weapon. Complainant Himmat Lal PW-4 and eye-witness Gurmeet Lal PW-5 broadly stated about the prosecution version narrated above. Dalip Singh, Draftsman PW-6 stated that he prepared scale site plan Ex.P-J after visiting the spot. HC Jarnail Singh PW-7 tendered his affidavit Ex.P-K affirming that the screw driver deposited with him was not tampered with. SI Ravi Kumar PW-8 stated about the investigation of the case conducted by him. Other prosecution witnesses were given as unnecessary.

On conclusion of prosecution evidence, the accused were examined under Section 313 of the Code of Criminal Procedure (in short – Cr.P.C.). In their statements, the accused denied all the incriminating circumstances appearing against them in the prosecution evidence and claimed to be innocent. Accused Ram Chander and Rakesh Kumar stated that they were not present in the Saw Mill and have been falsely implicated. Accused Amresh Jha stated that he used to work at the Saw Mill. Dwarka Nath had come to the Saw Mill and wanted to take fire wood, but was not paying the price for the same. Dwarka Nath pushed this accused, who also pushed him. Dwarka Nath fell down on the tumbler and sustained injury on his eye.

In defence, the accused examined two witnesses. Sham Kumar

DW-1 stated that all the three accused were working in the Saw Mill of Ramesh Kumar on 29.12.2002. This witness also used to reside in the premises of the Saw Mill. On 29.12.2002, at about 08:00 A.M., Dwarka Nath came to the Saw Mill for purchasing fuel wood. Small cut pieces of wood were lying in a heap in the Saw Mill. Dwarka Nath purchased fire wood from Amresh Jha, who was working in the Saw Mill. When Amresh Jha demanded price of the wood from Dwarka Nath, there was exchange of hot words between them resulting in a scuffle. In the scuffle, Dwarka Nath slipped and fell on the heap of cut pieces of wood and one splinter entered his eye and thereafter Dwarka Nath went away. It was also stated that Dwarka Nath alone had come to the Saw Mill to purchase wood and none of the accused caused any injury to him. Somewhat similar statement has been made by Shatrughan Sahu DW-2. Both these witnesses as well as all the three accused were employed in the Saw Mill and were residing in the premises thereof at the relevant time.

Learned Sessions Judge, Jalandhar, vide judgment dated 19.09.2005 and vide order dated 21.09.2005, convicted and sentenced the accused as already noticed in the opening part of this judgment. Feeling aggrieved, these appeals have been instituted by the convicts.

We have heard learned counsel for the parties and perused the case file.

The occurrence stands admitted by the accused, although in a different manner. The prosecution version is that all the three accused had beaten the deceased and also Amresh Jha inflicted injury on the eye of the deceased with some sharp iron object – a screw driver, recovered later on at the instance of Amresh Jha. The defence version, however, is that in the scuffle between the deceased and the accused Amresh Jha, the former fell on the heap of wood and some pointed wooden piece penetrated his eye. Accused Rakesh Kumar and Ram Chand have taken plea of alibi.

The prosecution version is proved by the statements of Himmat Lal complainant and Gurmeet Lal, eye witnesses. They have broadly stated according to the prosecution version that all the three accused had beaten the deceased and that Amresh Jha had also caused injury with some sharp edged iron object on the eye of the deceased. Gurmeet Lal, in fact, stated that the weapon used was like a screw driver. The nature of injury found on medico-legal examination as well as on post mortem examination also corroborates the prosecution version in this regard. The weapon of offence caused deep penetrating injury inasmuch as the penetrating wound was going from right eye, upwards and slightly medially and even lacerated the brain matter. It means that the weapon of offence penetrated through the skull and caused laceration to the brain matter. Such deep penetrating wound could be caused by a weapon like screw driver and not by a wooden splinter. In a case of narrow thin wooden splinter, the same would get broken and could not penetrate so deep, whereas in the case of a thick splinter, the width would increase and the same would also not be so sharp as to penetrate through the skull so as to cause laceration of the brain matter. Thus, notwithstanding the fact that all the three doctors have not ruled out the possibility of the injury being caused by sharp pointed wood, it was quite unlikely that such an injury could have been caused by a wooden piece. On the other hand, there is ocular version that it was caused with iron object like a screw driver. The doctors have not ruled out the causing of injury with screw driver or any such other object. Thus, medical evidence is not, in any manner, in conflict with the ocular version. It is correct that opinion of the doctors as to whether the injury could be caused with screw driver or not, was not obtained by the prosecution. However, even a layman can say that such an injury is quite possible with a screw driver. Moreover, opinion of doctor cannot override the statements of eye-witnesses, unless the ocular version is completely ruled out by medical

evidence or expert opinion. In the instant case, however, medical evidence is supportive of the ocular version and there is no expert evidence in conflict with the ocular version.

As noticed herein above, the occurrence stands admitted, although in a different manner. However, the prosecution evidence is credit worthy to prove that the injury was caused in the manner alleged by the prosecution. On the other hand, there is conflicting defence version because Amresh Jha in his statement under Section 313 Cr.P.C. stated that Dwarka Nath had fallen on a tumbler in the scuffle. The other two accused pleaded that they were not even present on the spot at the time of occurrence. However, not only Himmat Lal complainant and Gurmeet Lal, prosecution witnesses have stated about presence of and participation by all the three accused in the occurrence, but also the defence witnesses have stated that all the three accused were present there. The defence witnesses also stated that injury was caused by fall on heap of cut pieces of wood and not by fall on tumbler as stated by Amresh Jha in his statement under Section 313 Cr.P.C. Thus, the defence version is completely unreliable.

In addition to the aforesaid, it has also to be noticed that if Dwarka Nath and Amresh Jha were scuffling and pushing each other as alleged by Amresh Jha, then both of them would have been facing towards each other and on being pushed by Amresh Jha, Dwarka Nath would have fallen on the heap of wood with his back thereon and not with his eye or face towards the heap of wood. Moreover, if there were sharp wooden pieces of wood lying in a heap, Dwarka Nath would not have suffered the solitary fatal injury on the eye but would have suffered some other injuries as well. However, no such other injury caused by wood pieces was found on the person of the deceased. Thus, the defence version is not probable.

Learned counsel for the appellants contended that since the injury was going upward, it was possible by fall on pointed wooden piece

and not in the manner alleged by the prosecution. The contention cannot be accepted because if Amresh Jha inflicted injury with screw driver at the level of eye of the deceased, the eye-level being above the shoulder level of Amresh Jha, the screw driver would penetrate upwards. The medical evidence is thus rather supportive and corroborative of the prosecution case.

Learned counsel for the appellants also submitted that heap of wood has been depicted in the site plan and thus it probablises the defence version. The submission is devoid of substance because it is also the prosecution version that the complainant had taken fuel wood from the Saw Mill.

Learned counsel for the appellants also referred to intimation Ex.P-C sent from Satyam Hospital to the police mentioning that there was alleged history of quarrel between two parties. However, this circumstance does not militate against the prosecution version in any manner, particularly because the occurrence stands admitted and even presence of all the three accused at the spot is established even from the defence evidence.

Learned counsel for the appellants also contended that Himmat Lal PW-4 has made some improvements in his statement in the Court regarding payment for fuel wood. He stated in the Court that he had made payment of the fuel wood. However, in statement Ex.P-H to the police, he had stated that Rakesh Kumar-accused told him to adjust the amount against the amount of tea due from Rakesh Kumar. However, this minor circumstance has no adverse bearing on the prosecution case because it is even the defence version that there was dispute over the payment of price of fuel wood.

Learned counsel for the appellants also argued that there has been delay in lodging the FIR and also in sending the special report to the Magistrate. It was contended that the FIR was concluded at 03:45 P.M., but

was received by the Magistrate at 03:30 A.M. the next day and even the Constable, who had taken the special report, has not been examined. This argument also does not come to the rescue of the appellants. Initially the case was registered under Section 307/34 IPC only and it was later on, after four days, that it was converted into a case under Section 302/34 IPC on the death of Dwarka Nath. The occurrence took place sometime after 08:00 A.M. After the occurrence, the injured was removed to Civil Hospital, Jalandhar. After medico-legal examination and first-aid there, the injured was removed to a private hospital namely Satyam Hospital. Dwarka Nath was unfit to make statement when the police reached the hospital. Thereafter, Himmat Lal went to the Police Post and lodged report by making statement Ex.P-H, which along with police endorsement, concluded at 02:30 P.M. Keeping in view this sequence, it cannot be said that there has been any undue delay in lodging the FIR. As regards delay in sending the special report to Magistrate, the same is not very significant because the offence at that time was under Section 307/34 IPC only. In addition to it, the question of gaining time for fabricating the prosecution version did not arise in the instant case because presence of all the three accused at the spot at the time of occurrence is stated even by the defence witnesses, apart from the prosecution witnesses. Suffering of injury by the deceased at the place of occurrence is also admitted. In this view of the matter, alleged delay in sending the special report to Magistrate pales into insignificance.

Learned counsel for the appellants also vehemently contended that Rakesh Kumar and Ram Chander did not cause any injury and therefore, they deserve acquittal. The contention cannot be accepted. There is specific allegation from the inception, as also stated by the eye-witnesses in the witness-box that all the three accused had beaten Dwarka Nath. It is correct that except the injury caused with sharp pointed weapon, no other visible injury was found on the person of Dwarka Nath. However, beating

may not have resulted into any visible injury. In addition to it, all the three accused had taken Dwarka Nath from near the gate to inside the Saw Mill near the kitchen, where all of them gave beating to him. These circumstances point to common intention of all the three accused and therefore, Ram Chander and Rakesh Kumar cannot be acquitted. They are also vicariously liable with the aid of Section 34 IPC for the act of appellant Amresh Jha, who caused the fatal injury.

Learned counsel for the appellants lastly contended that even if the prosecution version is accepted, the case would not fall under Section 302 IPC and would at best fall within the mischief of Section 304-II IPC. It was pointed out that it is a case of single fatal injury and there was no previous enmity. The occurrence took place as a result of sudden quarrel and Amresh Jha could not have any intention to cause death or to cause fatal injury and at best, he could have knowledge that the injury being caused by him was likely to cause death. Reference was also made to exception-4 to Section 300 IPC. There is considerable merit in the contention. In addition to the beating by the three accused, which did not result in any apparent or visible injury, there was only single injury caused by Amresh Jha. There was no previous enmity between the parties nor there was any other motive to cause death of the deceased. There was sudden quarrel between the parties. The death also occurred after four days of the occurrence. It is thus apparent that Amresh Jha had no intention to cause death or to cause fatal injury to the deceased, although he had knowledge that the injury was likely to prove fatal. The case thus clearly falls within the purview of Section 304-II IPC and not under Section 302 IPC. The appellants deserve to succeed to this extent.

For the reasons recorded herein above, both these appeals are allowed partly and conviction of Amresh Jha-appellant is converted to that under Section 304-II IPC instead of Section 302 IPC, whereas conviction of

the remaining two appellants is converted to Section 304-II read with Section 34 IPC instead of that under Section 302 read with Section 34 IPC.

As regards sentence, learned counsel for the appellants stated that all the three appellants are in custody since 02.01.2003, the date of their arrest till date i.e. for a little over six years. Ram Chander and Rakesh Kumar have been convicted only with the aid of Section 34 IPC and therefore, in our considered opinion, ends of justice would be met if they are sentenced to undergo imprisonment for the period, for which they have already remained in custody in this case. We order accordingly. As regards Amresh Jha, who caused the fatal injury, we sentence him to undergo rigorous imprisonment for ten years.

The appeals stand disposed of accordingly.

(L. N. MITTAL)
JUDGE

January 08, 2009 **(MEHTAB SINGH GILL)**
monika **JUDGE**